

PRESERVE OUR SCENIC ENVIRONMENT

IBLA 79-126

Decided May 15, 1980

Appeal from a decision of the Medford, Oregon, District Office of the Bureau of Land Management, to conduct the Grouse Creek timber sale over the protest of appellants.

Affirmed.

1. Environmental Quality: Environmental Statements -- National Environmental Policy Act of 1969: Environmental Statements -- Timber Sales and Disposals

Where a programmatic environmental impact statement (EIS) has been completed and this has been supplemented by a site-specific environmental analysis concerning the impacts, mitigating measures, and alternatives for a specified timber sale, the law does not require preparation of an individual EIS for the timber sale in the absence of a material change in circumstances or departure from policy covered in the overall EIS.

2. Timber Sales and Disposals

A decision by BLM to proceed with a proposed timber sale which was made after consideration of all relevant factors and which is supported by the record will not be set aside in the absence of a showing that the decision is clearly in error.

APPEARANCES: Mrs. Frederick H. Albrechtsen, Preserve Our Scenic Environment; Donald P. Lawton, Assistant Regional Solicitor, for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

This case commenced with a protest of July 4, 1978, filed by Mrs. Fred Albrechtsen and other members of Preserve Our Scenic Environment, a group known by the acronym POSE. The protest filed with the Manager of the Medford, Oregon, District Office of the Bureau of Land Management (BLM), objected to the proposed logging of Unit 12 of the Grouse Creek timber sale.

Several grounds for the protest were recited by POSE. It was contended that the steep grade of the terrain would make reforestation difficult. Protestant stated that the land involved is placed by the BLM in a visual resources management (VRM) category which provides that management activities may be seen but should be subordinate to the natural environment. It is asserted that the proposed access road would violate this guideline. POSE contends that greater emphasis should be placed on visitor use of the area and the scenic value of the land in determining how to manage the land. Finally, it is alleged that an environmental impact statement (EIS) is required to properly evaluate the alternatives to and impacts of the timber sale.

The BLM District Manager responded to the protest by letter of August 4, 1978, in which it was stated that scenic values were considered in planning the Grouse Creek timber sale and specific measures to mitigate adverse impacts were implemented. Specifically, it was noted that the location of the access road had been changed to that provided for in alternate C of the Environmental Assessment Record (EAR). Further, the manner of construction of the road was changed to reduce the amount of cut and fill required and to provide for the removal of excavated material from those parts of the road where it would be visible from the valley. In addition, the District Manager noted that provision had been made for seeding and mulching of cut and fill slopes, and for leaving a vegetative screen of trees on the downhill side of the road.

The BLM District Manager further noted, in response to the protest, that the volume of timber to be harvested from Unit 12 was being reduced. BLM further responded that the shelterwood system of harvesting the timber, rather than clear cutting, was being implemented in the timber sale tract to facilitate reforestation. Finally, BLM explained that the proposed action is in compliance with the applicable VRM class guidelines.

This appeal was brought from the announced intention of the BLM to proceed with the sale. 1/ Appellants assert in their statement of

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1/ A party to a case adversely affected by a decision of the BLM has the right of appeal to the Board subject to certain exceptions. 43 CFR 4.410. A "party to a case" is presumed to have had input into the BLM's decision, thus providing the BLM an opportunity to rule on

reasons for appeal that the site is unsuitable for intensive timber management because of the fragile soil, the hazards to reforestation, and the low productive capacity of the unit. In support of the contention, appellants have submitted what purports to be a report of a "consultant forester" 2/ which reaches the conclusion that the area is undesirable for intensive timber management. It is asserted that the proposal for the construction of two roads on the ridge in Unit 12 would violate the VRM guidelines developed by BLM for the land. Appellants cite the discussion of the impact of the proposed action at page 10 of the EAR in which it is acknowledged that the proposed road would not be "subordinate to the natural landscape." Appellants further contend in their brief that the VRM classification of the subject land should be changed to require that management actions blend into the natural landscape and not be apparent to the casual observer.

The answer filed on behalf of the BLM cites the changes implemented in the timber sale, including the relocation and redesign of three-fourths of a mile of road to reduce visual impact and a change in the area being cut to a larger but less intensively harvested

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fn. 1 (continued)

the contentions raised by the party. Duncan Miller (On Reconsideration), 39 IBLA 312, 315-16 (1979); California Association of Four Wheel Drive Clubs, 30 IBLA 383, 385 (1977). It is through the filing of the protest of the timber sale stating the objections thereto and the subsequent ruling on the protest that the protestant, if adversely affected, may become a party to the timber sale case. Thus, the case is ordinarily ripe for review when the BLM has rendered a decision on the protest which adversely affects the protestant. Elaine Mikels, 41 IBLA 305 (1979).

An appeal must be filed within 30 days of receipt of the decision being appealed, 43 CFR 4.411, and the Board has held that the timely filing requirement is jurisdictional. Lavonne E. Grewell, 23 IBLA 190, 191 (1976). In the present case the response to the protest was in the form of a letter and lacked any indication of the right of appeal. There is no record of when the response was served upon protestant. Further, the record indicates that one of the mitigating measures (involving timber yarding techniques) identified in the EAR and described in the protest response, proved unfeasible, and had to be dropped from the timber sale. Thus, it is not clear that the BLM letter of August 4, 1978, constituted a final decision on the protest. However, in cases where it is clear that the BLM has issued a final decision in response to a protest, any appeal therefrom must be filed within 30 days of service of the decision in order to invoke the review jurisdiction of this Board. A protestant who has declined to appeal a decision on the protest may not subsequently elect to appeal the action which was the subject of the protest. 2/ The report gives no indication of the identity or background of the author.

area. The BLM responds that even using the data submitted by appellants in the consultant's report, the area qualifies as commercial forest land. It is asserted that regeneration should not be a problem utilizing BLM techniques, including the partial cut procedure in which approximately one-half of the existing mature trees would be left to provide shade for regeneration. The BLM asserts that the essence of the appeal is a disagreement with respect to how the O & C lands of the Little Applegate Valley should be managed.

The EAR prepared for the Grouse Creek timber sale provides an extensive analysis of the nature of the proposed action and alternatives thereto, the existing environment, the anticipated impacts of the proposal and the alternatives, and recommended mitigating measures. The fact that the location of the access road to the subject timber harvest unit (one of the aspects of the timber sale initially protested by POSE) was relocated to minimize the adverse visual impact (alternative C of the EAR) is evidence of the efficacy of the EAR.

The EAR is cross-referenced to a BLM programmatic environmental impact statement entitled Timber Management -- Final Environmental Impact Statement. The EAR is also related to the analysis made in the programmatic environmental analysis record developed by the BLM for timber management in Western Oregon. The answer of the BLM further indicates that the sale at issue here is within the Jackson Sustained Yield Unit of the Medford District and an environmental impact statement concerning timber management within the sustained yield unit is under preparation.

[1] Where a programmatic environmental impact statement has been completed and this has been supplemented by a site-specific environmental analysis concerning the impacts, mitigating measures, and alternatives for specified timber sales, the law does not require the preparation of an individual environmental impact statement for each timber sale in the absence of a material change in circumstances or departure from policy covered in the overall environmental impact statement. See Minnesota Public Interest Research Group v. Butz, 498 F.2d 1314, 1323 (8th Cir. 1974). This Board has in the past declined to find that a separate environmental impact statement is required for a specific timber sale where a programmatic statement for timber management in the sustained yield unit within which the timber sale lands are included is being prepared. Harold B. Canady, 29 IBLA 69 (1977). Accordingly, appellants have failed to sustain the contention that a separate environmental impact statement is required for the Grouse Creek timber sale or Unit 12 therein.

[2] The contention of appellants that the land embraced in Unit 12 of the timber sale should be devoted to recreational purposes based on its scenic value, and that timber harvesting should therefore be excluded, represents a legitimate viewpoint, but it has not been established that the BLM ignored these values or the environmental

impacts of the proposed action in reaching its decision to conduct the timber sale as modified. A decision by the BLM to proceed with a proposed timber sale, which was made after consideration of all relevant factors and which decision is supported by the record, will not be disturbed in the absence of a showing that the decision is clearly in error. George Jalbert, 39 IBLA 205 (1979).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Frederick Fishman  
Administrative Judge

